

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____ 1999, by and between the **WISCONSIN & SOUTHERN RAILROAD COMPANY**, a corporation, (hereinafter referred to as the "Railroad"); and _____ (hereinafter referred to as the "Contractor").

RECITALS:

Contractor has been hired by the City of Milwaukee Department of Neighborhood Services to perform work relating to Demolition @ 3131 West Galena Street and 1542 North 32nd Street (the "Work"), partially located on property of the Railroad, in the vicinity of Galena and Cherry Street, which Work is the subject of a Contract dated _____ between the Railroad and _____.

Contractor has requested Railroad to permit it to perform the work on Railroad property, and Railroad is agreeable thereto, subject to the following terms and conditions.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR

For purposes of this agreement, all references in this agreement to the Contractor shall include the Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED: PURPOSE

The Railroad hereby grants to the Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing any work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS A AND A-1

The terms and conditions contained in Exhibits A and A-1, attached hereto, are hereby made a part of this agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE

The Contractor shall bear any and all costs and expenses associated with any work performed by the Contractor, or any costs or expenses incurred by the Railroad relating to this agreement. All work performed by Contractor on Railroad's property shall be performed in a manner satisfactory to the Railroad's Roadmaster or his authorized representative (hereinafter the "Railroad Representative") identified below:

Matt Meekma

ARTICLE 5 - TERM: TERMINATION

a) The grant of right herein made to Contractor shall commence on the date of this agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad property.

- b) This agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 6 - CERTIFICATE OF INSURANCE

- a) Before commencing any work, Contractor will provide Railroad with a Certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit A-1 or this agreement in a policy which contains the following type of endorsement:

Wisconsin & Southern Railroad Company/Union Pacific Railroad Company is named as additional insured with respect to all liabilities arising out of Insured's, as Contractor, performance of any work on the property of the Railroad.

- b) Contractor warrants that this agreement has been thoroughly reviewed by its insurance agent(s)/broker(s) and that said agent(s)/broker(s) has been instructed to procure insurance coverage an endorsement as required herein.

- c) All insurance correspondence shall be directed to:

Ben Meighan, Superintendent, Maintenance of Way
Wisconsin & Southern Railroad Company
1890 East Johnson Street
Madison Wisconsin 53704

ARTICLE 7 - CHOICE OF FORUM

This agreement shall be governed, construed and enforced in accordance with the laws of the state of _____. Litigation arising out of or connected with this agreement may be instituted and maintained in the courts of the state(s) of Wisconsin and _____ only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

ARTICLE 8 - DISMISSAL OF CONTRACTOR/SUBCONTRACTOR EMPLOYEE

At the request of the Railroad, Contractor shall remove from railroad property any employee of Contractor or any subcontractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad property.

ARTICLE 9 - ADMINISTRATIVE FEE

Contractor shall pay to Railroad _____ Dollars (\$_____) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this agreement.

ARTICLE 10 - SPECIAL PROVISIONS

- a) No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of the Railroad.

- b) Explosives or other highly flammable substances shall not be stored on railroad property without the prior written approval of the Railroad Representative.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate as of the date first herein written.

(Name of Contractor)

(Signature)

(Title)

WISCONSIN & SOUTHERN RAILROAD COMPANY

Superintendent, Maintenance of Way

EXHIBIT A TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK – FLAGGING

a. The Contractor agrees to notify the Railroad Representative at least 10 working days in advance of Contractor commencing its work and at least 5 working days in advance of proposed performance of any work by the Contractor in which any person or equipment will be within 25 feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 25 feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such 5-day notice, the Railroad Representative will determine and inform the Contractor whether a flagman need be present and whether the Contractor need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by the Railroad, such services will be provided at Contractor's expense with the understanding that if the railroad provides any flagging or other services, the Contractor shall not be relieved of any of its liabilities set forth herein. Contractor shall promptly pay to Railroad all charges connected with such services within 30 days after presentation of a bill therefor.

b. The rate of pay per hour for each man will be \$84.00 hourly rate in effect for an eight hour day for the class of men used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health & welfare, supplemental sickness, Railroad Retirement & UC, supplemental pension, Empl. Liability & Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect on the day of execution of this agreement. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between the railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Contractor shall pay on the basis of the new rates and changes.

c. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment of work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the Contractor may not be working during such time.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

a. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the railroad to use and maintain its entire property including the right and power of the Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the railroad without liability to the Licensee or to any other party for compensation or damages.

b. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licenses lessees of the Railroad's property, and others) and the right of the Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH RAILROAD'S OPERATION

No work performed by Contractor shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad, its lessees, licensees or others, unless specifically permitted under this agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by the contractor at any time that would in any manner impair the safety thereof. When not in use, Contractor's machinery and materials shall be kept at least 50 feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's track except at existing open public crossings.

Section 4. MECHANIC'S LIENS

The Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. The Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of the Railroad for any such work performed. The Contractor shall indemnify and hold harmless the Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS

a. Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone the Railroad at _____ (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, and will commence no work on the right of way until all such protection or relocation has been accomplished.

b. In addition to other indemnity provisions in the Agreement, the Contractor shall indemnify and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Contractor, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunications company using Railroad's property or a customer or user of services on the fiber optic cable on Railroad's property.

Section 6. COMPLIANCE WITH LAWS

In the prosecution of the work covered by this agreement, the Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Contractor shall use only such methods as are consistent with safety, both as concerns for the contractor, the Contractor's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Contractor (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's property. If any failure by the Contractor to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Contractor shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorneys' fees, court costs and expenses. The Contractor further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

Section 7. SAFETY INSTRUCTIONS

Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the Work pursuant to this agreement. As reinforcement and in furtherance of overall safety measures to be observed by the Contractor (and not by way of limitation), the following special safety rules must be followed:

a. The Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job. The Contractor shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. The Contractor shall promptly notify the Railroad of any U. S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The Contractor shall have a non-delegable duty to control its employees while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug, narcotic or other substance that may inhibit the safe performance of work by the employee.

b. The employees of the Contractor shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective work boots and at least the following protective equipment:

(1) Protective head gear that meets American National Standard Z89.1-latest revision. It is suggested that all hardhats be affixed with Contractor's or subcontractor's company logo or name.

(2) Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc; and

(3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

c. All heavy equipment provided or leased by the Contractor shall be equipped with audible back-up warning devices. If in the opinion of the railroad Representative any Contractor's or any of its subcontractor's equipment is unsafe for use on the Railroad's right-of-way, the Contractor, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

Section 8. INDEMNITY

a. As used in the Section, "Railroad" includes other railroad companies using the Railroad's property at or near the location of the Contractor's installation and their officers, agents, and employees. "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expense of whatsoever nature, including court costs and attorney's fees, which may result from: (a) injury to or death of persons whomsoever (including the Railroad's officers, agents, and employees, the Contractor's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Contractor's property, damage to the roadbed, tracks, equipment, or other property of the Railroad, or property in its care or custody.)

b. As a major inducement and in consideration of the license and permission herein granted, the Contractor agrees to indemnify and hold harmless the Railroad from any Loss which is due to or arises from any cause and is associated in whole or in part with the work performed under this agreement, a breach of the agreement, or the failure to observe the health and safety provisions herein, or any activity, omission, or negligence arising out of performance or nonperformance of this agreement regardless of whether contributed to in part by the negligence or fault of Railroad. However, the Contractor shall not indemnify the railroad when the Loss is caused by the sole negligence of the Railroad.

c. Any liability of either party hereunder to one of its employees under any Workers' Compensation Act or the Federal Employer's Liability Act shall not be questioned or in any way challenged by the other party, nor shall any jury or court findings resulting from any employee's suit against either party pursuant to any such Act(s) be relied upon or used by either party in any attempt to assert common law liability against the other.

Section 9. RESTORATION OF PROPERTY

In the event the Railroad authorizes the Contractor to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Contractor, then in that event the Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. The Contractor shall remove all the Contractor's tools, equipment and materials from Railroad's property upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF BREACH

Waiver by the Railroad of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Contractor shall in no way impair the right of the railroad to avail itself of any remedy for any subsequent breach thereof.

Section 11. ASSIGNMENT – SUBCONTRACTING

The Contractor shall not assign, sublet or subcontract this agreement, or any interest therein, without the written consent of the Railroad and any attempt to so assign, sublet or subcontract without the written consent of the Railroad shall be void. If the Railroad gives the Contractor permission to subcontract all or any portion of the work herein described, the Contractor is and shall remain responsible for all work of subcontractors and all work of subcontractors shall be governed by the terms of this agreement.

Exhibit A-1
WISCONSIN & SOUTHERN RAILROAD
CONTRACT INSURANCE REQUIREMENTS
Third Party Contractors Right Of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

(a) **General Liability** insurance providing bodily injury including death, personal injury and property damage coverage with a combined single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. This insurance shall contain broad form contractual liability with a separate general aggregate for the project (ISO Form CG2503 or equivalent). Exclusion for explosion, collapse and underground hazard shall be removed. Coverage purchased on a claims made form shall provide for at least a two (2) year extended reporting or discovery period if (a) the coverage changes from a claims made form to an occurrence form, (b) there is a lapse/cancellation of coverage, or (c) the succeeding claims made policy retroactive date is different for the expiring policy.

(b) **Automobile Liability** insurance providing bodily injury and property damage coverage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall cover all motor vehicles including hired and non-owned, and mobile equipment if excluded from coverage under the general public liability insurance.

(c) **Workers' Compensation** insurance covering Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement, and Employers' Liability. If such insurance will not cover the liability of Contractor in states that require participation in state workers' compensation fund, Contractor shall comply with the laws of such states. If Contractor is self-insured, evidence of state approval must be provided.

(d) **Railroad Protective Liability** insurance naming the Railroad as the insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The policy shall be broad form coverage for "Physical Damage to Property" (ISO Form CG0035 or equivalent) and include pollution arising out of fuels and lubricants brought to the job site (ISO Form CG2831 or equivalent). A binder of insurance for Railroad Protective Liability must be submitted to the Railroad and the original policy or a certified duplicate original policy must be forwarded to the Railroad when available.

Contractor and its insurers shall endorse the required insurance policy(ies) to waive their right of subrogation against Railroad. Contractor and its insurers also waive their right to subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control. Contractor's insurance shall be primary with respect to any insurance carried by Railroad. The policy(ies) required under (a) and (b) above shall provide severability of interests and shall name Railroad as an additional insured.

Prior to commencing the Work, Contractor shall furnish to Railroad certificate(s) of insurance evidencing the required coverage and endorsements and upon request, a certified duplicate original of any required policy. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any material alteration including any change in the retroactive date in any "claims-made" policies or substantial reduction or aggregate limits, if such limits apply, or any cancellation at least thirty (30) days prior thereto.

The insurance policy(ies) shall be written by a reputable insurance company(ies) acceptable to Railroad or with a current Best's Insurance Guide Rating of B and Class VII or better, and authorized to do business in the state(s) in which the Job Site is located.

(e) Contractor **WARRANTS** that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

If Contractor fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of the Contractor.

The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.